

Internal Revenue Service

Number: **201110006**

Release Date: 3/11/2011

Index Number: 382.00-00, 382.07-00,
382.07-05

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

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PLR-131637-10

Date:

September 10, 2010

LEGEND

Acquiring =

Target =

Merger Sub =

Business =

Industry =

Agreement =

State X =

Reserve =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

k =

l =

Dear :

We respond to your letter dated July 29, 2010 requesting rulings on certain federal income tax consequences of the proposed transaction described below. The information provided in that letter and in later correspondence is summarized below.

The rulings contained in this letter are based upon facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an

appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

SUMMARY OF FACTS

Acquiring is a widely held, publicly traded corporation involved in Business and is the common parent of an affiliated group of corporations that files a consolidated federal income tax return (the Acquiring Consolidated Group). The Acquiring Consolidated Group has significant net operating loss carryforwards. As of Date 4, Acquiring's capital stock consisted of a outstanding shares of common stock with a \$b par value. There are currently no shares of Acquiring preferred stock outstanding. In addition, there are no outstanding warrants or options to acquire Acquiring common or preferred stock, with the exception of compensatory options issued to employees.

As of Date 4, Acquiring has determined that it did not have any 5-percent shareholders within the meaning of section 382 of the Internal Revenue Code, other than direct public groups within the meaning of § 1.382-2T(j)(2)(ii) of the Income Tax Regulations. Accordingly, all of Acquiring's stock is treated as being owned by one or more public groups for purposes of section 382 (collectively, the Acquiring Public Groups). Acquiring has determined that it has experienced a cumulative owner shift of less than c percent as of Date 2.

Target is a widely held, publicly traded corporation also engaged in Business and is the common parent of an affiliated group of corporations that files a consolidated federal income tax return (the Target Consolidated Group). The Target Consolidated Group also has significant net operating loss carryforwards. As of Date 4, Target's capital stock consisted of d outstanding shares of common stock with an \$e par value. In addition, Target has two classes of publicly traded warrants outstanding, each of which was issued on Date 1. The warrants entitle holders to purchase an aggregate of f and g shares of Target common stock, respectively, and may be exercised individually or in the aggregate at any time until the fifth anniversary of their issuance.

As of Date 4, Target is aware of three 5-percent shareholders that cumulatively own approximately h percent of Target's common stock. Target's remaining stock is treated as being owned by one or more public groups for purposes of section 382 (collectively, the Target Public Groups). Target has determined that it has experienced a cumulative owner shift of approximately i percent as of Date 4.

PROPOSED TRANSACTION

The Industry in which Business is conducted is cyclical and capital intensive. The view of Acquiring's management is that there will be consolidation over time among Industry participants to achieve scale and diversity of assets. Thus, Acquiring's management

has been evaluating acquisitions of additional assets and strategic divestitures. Target's management has been making similar evaluations and reviews.

As a result, on Date 3, following significant negotiations and the approvals of both boards of directors, Acquiring and Target executed the Agreement, which provides for the merger of Acquiring's transitory merger subsidiary, Merger Sub, with and into Target pursuant to State X law, with Target surviving as a wholly owned subsidiary of Acquiring (the Proposed Transaction). Acquiring represents that the Proposed Transaction will qualify as a tax-free reorganization under either section 368(a)(1)(A) by reason of section 368(a)(2)(E) or section 368(a)(1)(B). It is anticipated that the Proposed Transaction also will constitute a reverse acquisition within the meaning of § 1.1502-75(d)(3).

Pursuant to the Agreement, each share of Target common stock that is either (i) issued and outstanding immediately prior to the effective date of the Proposed Transaction (other than any shares of Target common stock owned directly or indirectly by Acquiring, Target, Merger Sub, or any of their respective subsidiaries that will be cancelled upon completion of the Proposed Transaction), or (ii) to be issued pursuant to the Reserve will be converted into the right to receive j shares of Acquiring common stock. No fractional shares will be issued in connection with the Proposed Transaction, and holders will be entitled to receive cash in lieu thereof. Acquiring shareholders will continue to own their existing shares, which will not be affected by the Proposed Transaction.

The managements of Acquiring and Target expect that the shareholders of Acquiring will own approximately k percent of Acquiring's outstanding stock immediately after the Proposed Transaction and the former shareholders of Target will own the remaining l percent of Acquiring's outstanding stock.

Acquiring's management believes that certain shareholders that are included in the Acquiring Public Groups are also included in the Target Public Groups (the Overlapping Public Group, with each individual shareholder of the Overlapping Public Group referred to herein as an Overlapping Shareholder). In connection with the Proposed Transaction, Acquiring plans to obtain actual knowledge of the identity of and the amount of Acquiring and Target stock owned by members of the Overlapping Public Group immediately before the Proposed Transaction.

Acquiring plans to obtain actual knowledge of the stock ownership of the Overlapping Public Group in two phases. First, Acquiring will develop a list of possible Overlapping Shareholders through: (i) inquiries with the investor relations departments at Acquiring and Target, (ii) the use of electronic research resources provided by an unrelated shareholder research organization, and (iii) a review of applicable public filings with the U.S. Securities and Exchange Commission. Second, once the population of potential Overlapping Shareholders has been determined, Acquiring will contact such persons

directly by telephone and email to confirm whether each person constitutes an Overlapping Shareholder and the amount of stock of Acquiring and Target owned by such person immediately prior to the Proposed Transaction. If the person is willing to share such information, the Acquiring investor relations department will send a written request via email (the Written Inquiry) to the person to confirm the following:

- (i) Whether or the extent to which the Overlapping Shareholder was an economic owner of Acquiring's stock;
- (ii) The identity of potential indirect 5-percent shareholders of Acquiring stock by reason of owning significant percentages of economic rights in the Overlapping Shareholder; and
- (iii) Whether the Overlapping Shareholder might be viewed as a single 5-percent shareholder under the entity rules of § 1.382-3(a).

If the Overlapping Shareholder has economic ownership of Acquiring stock, the Written Inquiry will ask for further confirmation of the number of shares owned immediately before the Proposed Transaction. In addition, the Acquiring investor relations department may engage in follow-up correspondence with Overlapping Shareholders to confirm and clarify responses to the Written Inquiries, as necessary.

REPRESENTATIONS

Acquiring makes the following representations with respect to the Proposed Transaction:

- (a) Acquiring is a loss corporation as defined in section 382(k)(1).
- (b) Acquiring's only class of outstanding stock during the relevant testing period is its common stock described herein.
- (c) Acquiring has no other outstanding interests or obligations that would be treated as stock for purposes of section 382.
- (d) Prior to the Proposed Transaction, Acquiring will have no actual knowledge other than the corporate records of Acquiring and Target, actual knowledge obtained in determining Acquiring's and Target's 5-percent shareholders as described above, and additional information to be obtained through the Written Inquiries.
- (e) The Proposed Transaction will qualify as a tax-free reorganization within the meaning of section 368(a).

RULINGS

Based solely on the information submitted and the representations set forth above, we rule as follows:

- (1) The additional information that Acquiring will obtain about the stock ownership of the Overlapping Public Group through the Written Inquiries is an acceptable method of determining actual knowledge within the meaning of § 1.382-2T(k)(2) (the Actual Knowledge).
- (2) For purposes of determining whether the Proposed Transaction results in a change of ownership of Acquiring on the testing date, Acquiring is permitted to use the Actual Knowledge to treat the Overlapping Public Group as an additional direct public group of Acquiring for purposes of applying the segregation rules of § 1.382-2T(j)(2), and the presumption described in § 1.382-2T(j)(2)(iii)(B)(1) will not apply.
- (3) For purposes of determining the increase in the Overlapping Public Group's percentage ownership of Acquiring as a result of the Proposed Transaction, there is no requirement that Acquiring inquire as to the stock ownership of Acquiring held by the Overlapping Public Group throughout the entire testing period ending on the date of the Proposed Transaction.

CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the Proposed Transaction under other provisions of the Code or the regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction that are not specifically covered by the above rulings.

PROCEDURAL STATEMENTS

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Internal Revenue Code provides that it may not be used or cited as precedent.

A copy of this ruling letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the Power of Attorney on file with this office, we are sending a copy of this ruling letter to your authorized representative.

Sincerely,

Filiz A. Serbes
Chief, Branch 3
Office of Associate Chief Counsel (Corporate)

cc: